

BRETT A. SHUMATE

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Experience

WILEY REIN LLP, Washington, D.C.

Partner, 2015-present; Associate, 2007-2014; Summer Associate (2005)

- **Regulatory Litigation:** Develop creative litigation strategies to challenge agency action under the Administrative Procedure Act, First Amendment, Fifth Amendment, Communications Act, Tariff Act, and Tucker Act. Particular expertise challenging Federal Communications Commission (FCC) rules. Briefed and argued First Amendment challenge to FCC net neutrality rules in D.C. Circuit. Briefed and argued challenges to Department of Commerce tariff decisions in Court of International Trade. Counsel of record to American Bankers Association (ABA) in Court of Federal Claims action seeking damages for reduction of Federal Reserve dividend rate.
- **Appellate Litigation:** Manage teams of attorneys representing clients in the federal courts of appeals and U.S. Supreme Court in cases involving bankruptcy, criminal, immigration, election, admiralty, and copyright laws. Argued appeals in D.C., Fourth, and Ninth Circuits. Represent industry associations, including United States Telecom Association, U.S. Chamber of Commerce, and National Federation of Independent Business (NFIB), as *amici* in cases affecting businesses.
- **Agency Proceedings:** Advocate for businesses and industry associations in adjudicatory and rulemaking matters before federal agencies, including FCC, Department of Commerce, Food and Drug Administration, and Department of Agriculture. Expertise handling cases involving Title II common carrier, satellite, wireless, cable, and Internet issues at FCC. Develop comprehensive strategies to position matters for judicial review. Advise businesses on FCC net neutrality rules.

THE HON. EDITH H. JONES, CHIEF JUDGE, U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT, Houston, TX
Law Clerk, 2006-2007

OFFICE OF LEGAL POLICY, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C.

Law Clerk, 2004

Honors

- "Recommended lawyer" in Appellate Law, *The Legal 500 US* (2016)
- "Rising Star" in Telecommunications Law, *Law360* (2016)
- Burton Award for Distinguished Legal Writing (2016)
- "Legal Lion," *Law360's* Weekly Verdict Column (2014)

Affiliations and Activities

- Federalist Society: Executive Committee, Telecommunications & Electronic Media Practice Group
- Federal Communications Bar Association: Co-chair, Judicial Practice Committee

Notable Cases

REGULATORY LITIGATION

- *American Bankers Ass'n v. U.S.* (Fed. Cl.), lead counsel in challenge to Federal Reserve dividend cut
- *US Telecom v. FCC* (D.C. Cir.): briefed and argued First Amendment challenge to net neutrality rules
- *Verizon v. FCC* (D.C. Cir.): wrote briefs for Verizon in successful challenge to net neutrality rules
- *City of Arlington v. FCC* (U.S.): wrote brief for Verizon in case involving *Chevron* deference
- *Maverick v. U.S.* (CIT): argued trade case challenging Department of Commerce subsidy ruling
- *Husteel v. U.S.* (CIT): argued trade case challenging Department of Commerce antidumping duties
- *Neustar v. FCC* (D.C. Cir.): wrote briefs for petitioner challenging award of \$500 million contract
- *Cello P'ship v. FCC* (D.C. Cir.): wrote briefs for Verizon challenging FCC data roaming rules
- *Anne Arundel County v. FCC* (6th Cir.): wrote brief for telecom industry in challenge to franchising rules
- *Verizon/AT&T v. FCC* (D.C. Cir.): wrote briefs for petitioners challenging forbearance ruling
- *Bais Yaakov v. FCC* (D.C. Cir.): wrote *amici* brief for NFIB in challenge to fax rules
- *Vermont v. FCC* (D.C. Cir.): wrote brief for Verizon in appeal of universal service policies

- *Council Tree v. FCC* (10th Cir., 3d Cir.): wrote briefs for Verizon in cases challenging \$19 billion auction
- *Cablevision v. FCC* (2d Cir.): wrote briefs in case involving challenge to Cable Act must-carry provisions
- *NCTA v. FCC* (D.C. Cir.): wrote brief for Verizon challenging FCC marketing rules

APPELLATE LITIGATION

- *In re Rowe* (4th Cir.): successfully argued appeal involving issue of first impression under bankruptcy law
- *Swinger v. Vanderpol* (9th Cir.): successfully argued appeal involving federal Quiet Title Act
- *U.S. v. Martin* (9th Cir.): wrote briefs in case overturning federal criminal tax convictions and sentence
- *ATP, Inc. v. Bullock* (U.S.): wrote *amicus* brief for U.S. Chamber in challenge to campaign finance law
- *Cox v. BMG* (4th Cir.): wrote *amicus* brief for telecom industry in case involving DMCA
- *Flame v. Freight Bulk* (4th Cir.): wrote briefs for international shipping company in admiralty case
- *Tsolainos v. Cain* (5th Cir.): wrote briefs in habeas corpus action raising constitutional claims
- *Amesbury v. CSA* (3d Cir.): wrote brief for client in case involving combatant activities under FTCA
- *New Cingular Wireless v. Finley* (4th Cir.): wrote briefs in appeal of state PUC decision
- *Scott v. American Federation* (U.S.): wrote cert. petition in Fourth Amendment case
- *Ramirez-Villalpando v. Holder* (9th Cir.): briefed and argued administrative and immigration law appeal
- *KBR v. Harris* (U.S.): wrote *amicus* brief for defense industry in case involving contractor on the battlefield
- *US Airways, Inc. v. McCutchen* (U.S.): wrote *amicus* brief for insurance industry in ERISA case
- *Alhel v. City of Springfield* (U.S.): wrote cert. petition in case involving Tax Injunction Act
- *VFJ Ventures v. Surtees* (U.S.): wrote *amicus* brief for U.S. Chamber in case involving local taxes
- *Kwong v. Holder* (U.S.): wrote cert. petition featured as SCOTUSblog's "Petition of the Day"
- *Coors v. Mendez-Torres* (1st Cir.): wrote briefs in dormant Commerce Clause challenge to beer tax

Notable Publications & Speaking Engagements

- *The International Comparative Legal Guide to Telecoms, Media & Internet Laws & Regulations* (2017)
- *Business and Commercial Litigation in Federal Courts: Communications Litigation*, 4th ed., Thomson Reuters (2016)
- *Free Speech and the Internet*, The Federalist Society Video Series (2016)
- *Taking the FCC to Court: An Adventurous Agency Faces Increasing Judicial Scrutiny*, Washington Legal Foundation Media Briefing Program (2016)
- *FCC's Use of "Fact Sheets" Short-Circuits the Administrative Procedure Act*, Washington Legal Foundation (2016)
- *10 Things To Know About Net Neutrality And Class Actions*, Law360 (2016)
- *The President's Judicial Legacy*, The Federalist Society Teleforum Conference Call (2016)
- *Sponsored Data, Net Neutrality, and the 1st Amendment*, Law360 (2016)
- *Net Neutrality Litigation*, The Federalist Society Teleforum Conference Call (2015)
- *Net Neutrality and the Rule of Law*, Engage: The Journal of the Federalist Society Practice Groups (2015)
- *Consequences of Net Neutrality: Perspectives from Across the Industry*, 2015 FCBA Annual Seminar
- *The FCC's Expanding Use of Delegated Authority and the Dilemma of Appellate Jurisdiction*, Communications Lawyer, Vol. 31, No. 2 (2015)
- *Don't Tread on the Internet*, Los Angeles Daily Journal (2014)
- *D.C. Circuit Challenge to FCC's Authority Over Fax Advertisements Has Important First Amendment Implications*, Bloomberg BNA's Telecommunications Law Resource Center (2014)
- *Testing the Limits of Chevron: Judicial Deference to the FCC on Universal Service*, Bloomberg Law Reports (2012)

Education

WAKE FOREST LAW SCHOOL, Winston-Salem, NC

J.D. 2006, *magna cum laude*, Order of the Coif

Executive Editor, Wake Forest Law Review

Best Advocate, Philip C. Jessup International Law Moot Court Competition, East Region

FURMAN UNIVERSITY, Greenville, SC

B.A. 2003, Political Science and History, *magna cum laude*, Phi Beta Kappa,

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